IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6798 OF 2004

Shri Avinash Moreshwar Wadikar : Petitioner

V/s.

M/s.Basawraj Oil Mill : Respondent

...

Mr.N.V.Bandiwadekar for the petitioner.

None present for the respondent.

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CORAM : S.A. BOBDE, J.

August 2, 2005.

P.C.:

1. Though notice for final disposal has been issued and the petitioner has filed an affidavit of service, none appears for the respondent.

Hence, rule. Rule is made returnable forthwith.

2. The only question in this petition pertains to the valuation of the suit. The petitioner is the defendant. The respondent has sued for possession of the suit godown allegedly given to the petitioner on a leave and licence basis for the period from 1.6.1999 to 31.3.2000 vide para 4 of the plaint.

3. The petitioner raised an objection to the valuation of the suit since the suit had been valued under section 6 (xi) and (xii) of the Bombay Court Fees Act, 1959, hereinafter referred to as the "Act", on the basis of the amount of rent payable in respect of the suit property. Section 6 (xi) and (xii) of the Act read as follows:-

> **"6. Computation of fees payable in certain suits**
>
> The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:
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> (i) .....
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> (ii) .....
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> (iii) .....
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> (iv) .....
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> (v) .....
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> (vi) .....
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> (vii) .....
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> (viii) .....
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> (ix) .....
>
> (x) .....
>
> (xi) **for specific performance**.
>
> In suits for specific performance--
>
> (a) of a contract of sale--according to

the amount of the consideration,

(b) of a contract of mortgage--according to the amount agreed to be secured,

(c) of a contract of lease--according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term,

(d) of an award--according to the amount or value of the property in dispute:

(xii) **between landlord and tenant**.

In the following suits between landlord and tenant:

(a) for the delivery by a tenant of the counterpart of a lease,

(b) to enhance the rent of a tenant having a right of occupancy,

(c) for the delivery by a landlord of a lease,

(d) for the recovery of immoveable property from a tenant, including a tenant holding over after the determination of a tenancy,

(e) to contest a notice of ejectment,

(f) to recover the occupancy of immoveable property from which a tenant has been illegally ejected by the landlord, and

(g) for abatement of rent--

according to the amount of the rent of the immoveable property to which the suit refers, payable for the year next before the date of presenting the plaint."

Obviously, sub-section (xi) has no application since this is not a suit for specific performance. It is clear that even sub-section (xii) has no application because this is not a suit between a landlord and a tenant.

4. In these circumstances, I am of view that the trial Court ought to have upheld the petitioner’s contention

that the suit is susceptible to valuation under sub-section (v) which reads as follows:-

> "(v) **for possession of lands, houses and gardens**.
>
> In suits for the possession of land, houses and gardens according to the value of the subject-matter, and such value shall be deemed to be, where the subject-matter is a house or garden according to the market value of the house or garden and where the subject-matter is land, and--
>
> (a) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government a sum equal to twenty times the survey assessment;
>
> (b) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government a sum equal to forty times the survey assessment; and

(c) where the whole or any part of the annual survey assessment, is remitted a sum computed under sub-paragraph (a) or sub-paragraph (b) as the case may be, in addiction to forty times the assessment or, the portion of assessment, so remitted."

5. The impugned order is set aside. The trial Court is directed to take appropriate steps for having the correct valuation of the suit, in accordance with law, as observed above. The rule is made absolute in the aforesaid terms.

Sd/-

S.A. BOBDE, J.